

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GOLD STATE ACOUSTICS & DRYWALL, INC.
AND ITS ALTER EGO, GOLD
STATE ACOUSTICS, INC.

and

Case 3--CA--15711

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA LOCAL UNION 203 AND
FUND, TRUSTEES

DECISION AND ORDER

By Chairman Stephens and Members Cracraft and Randabaugh
Upon a charge filed by the Union June 15, 1990, as amended July 27, 1990,

the General Counsel of the National Labor Relations Board issued a complaint against Gold State Acoustics & Drywall, Inc. and its alter ego, Gold State Acoustics, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent has failed to file an answer.

On October 5, 1990, the General Counsel filed a Motion for Summary Judgment. On October 11, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by certified letter dated August 27, 1990, notified the Respondent that unless an answer was received by September 7, 1990, a Motion for Summary Judgment would be filed. To date, the Respondent has not filed an answer to the complaint.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

Gold State Acoustics & Drywall, Inc. (Respondent G.S.A. Drywall) and Gold State Acoustics, Inc. (Respondent G.S. Acoustics), collectively the Respondent, are New York corporations engaged in business operations as drywall and acoustic tile contractors at a facility in Hopewell Junction, New York, where the Respondent annually derived gross revenues in excess of \$50,000, of which an amount in excess of \$50,000 was derived from providing services to other enterprises directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that United Brotherhood of Carpenters and

Joiners of America Local Union 203, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Alter Ego/Single Employer

On or about January 1990, Respondent G.S.A. Drywall and its agent, Julius White, established Respondent G.S. Acoustics as a subordinate instrument to and disguised continuation of Respondent G.S.A. Drywall. At all times material, Respondent G.S. Acoustics has operated out of the Hopewell Junction facility maintained by Respondent G.S.A. Drywall, and has been engaged in the same business operations engaged in by Respondent G.S.A. Drywall, has utilized the facility operated by Respondent G.S.A. Drywall, and has employed the same employees and supervisors as have been employed by Respondent G.S.A. Drywall. Further, Respondent G.S.A. Drywall and Respondent G.S. Acoustics have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy affecting employees of the operations; have shared common premises and facilities; have provided services for and made sales to each other; and have interchanged personnel with each other.

By virtue of the acts and conduct described above, we find that Respondent G.S.A. Drywall and Respondent G.S. Acoustics are, and have been at all times material, alter egos and a single employer within the meaning of the Act.

B. Representation

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All journeymen, foreman, and apprentices.

On or about March 8, 1989, the Respondent and the Union entered into a prehire collective-bargaining agreement within the meaning of Section 8(f) of the Act covering the employees in the bargaining unit by adopting the agreement between the Union and Master Builders Association of Dutchess County, Inc., effective by its terms from June 1, 1987, until May 31, 1990. Under John Deklewa & Sons, 282 NLRB 1375 (1987), enfd. sub. nom. Iron Workers Local 3 v. NLRB, 843 F.2d 770 (3d. Cir. 1988), the Union is the limited exclusive collective-bargaining representative of the unit employees.

C. Refusals to Bargain

On or about April 27, 1990, the Trustees of the Carpenters and Joiners Local Union 203 Benefit Funds, the Fund, on behalf of the Fund and the Union, requested in writing that the Respondent provide the following information concerning employees who have performed work for the Respondent under the collective-bargaining agreement at a job known as the "'Red Hook School Job'": the names of all such workers employed since the inception of work, the hours each has worked, and the amount of contributions for each worker, together with a proposal for payment. Such information is necessary and relevant for the Union's performance as the unit employees' bargaining representative. Since on or about April 27, 1990, the Respondent has failed and refused to furnish the Union with the information requested.

Since on or about January 1990, and continuing thereafter, the Respondent ceased to continue in full force and effect the collective-bargaining agreement referred to above, and unilaterally abrogated, rescinded, and repudiated the collective-bargaining agreement. Further, since on or about January 1990, and continuing thereafter, Respondent G.S.A. Drywall transferred unit employees to the payroll of Respondent G.S. Acoustics, unilaterally established and maintained terms and conditions of employment for bargaining

unit employees, and operated and maintained Respondent G.S. Acoustics as an entity having no collective bargaining or other relationship with the Union.

Based on the foregoing, we find that under the principles of John Deklewa & Sons, supra, the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally repudiating and failing to abide by the terms of the governing bargaining agreement, commencing in January 1990 until the expiration of the agreement on May 31, 1990. Further, we find that the Respondent unlawfully failed to provide requested information relevant to the Union's performance of its function as Section 8(f) bargaining representative during the term of the bargaining agreement. Finally, we find that the Respondent unlawfully refused to bargain with the Union during the term of the bargaining agreement by evading its contractual obligations to the Union from January to May 31, 1990, by transferring bargaining unit employees from Respondent G.S.A. Drywall to the payroll of Respondent G.S. Acoustics.

Conclusions of Law

By unilaterally repudiating and failing to abide by the terms of the applicable bargaining agreement commencing January 1990 until the expiration of the agreement on May 31, 1990; by failing to provide requested information relevant to the Union's performance of its function as Section 8(f) bargaining representative during the term of the bargaining agreement; and by evading its contractual obligations to the Union by transferring bargaining unit employees to the payroll of Respondent G.S. Acoustics, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to comply with the terms of its collective-bargaining agreement with the Union from January 1990 through the expiration of the agreement on May 31, 1990. Further, we shall order the Respondent to make bargaining unit employees whole for any losses of wages and benefits that they may have suffered as a result of the Respondent's failure to comply with the collective-bargaining agreement from January 1990 through its expiration on May 31, 1990, and by its evasion of its contractual obligations by transferring employees to the payroll of Respondent G.S. Acoustics. Employees shall be made whole for such losses in the manner prescribed in Ogle Protection Service, 183 NLRB 682 (1970), with interest as computed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Additionally, the Respondent shall pay any delinquent contributions to the Fund owing under the contract from January to May 31, 1990, with any additional amounts to such payments to be computed in accordance with the Board's decision in Merryweather Optical Co., 240 NLRB 1213 (1979). The Respondent shall reimburse its employees for any expenses resulting from its failure to make such contractually required payments in the manner set forth in Kraft Plumbing & Heating, 252 NLRB 891 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as computed under New Horizons for the Retarded, supra. Finally, we shall order the Respondent to provide the Union with the information requested on April 27, 1990, which the Respondent failed to provide during the term of the collective-bargaining agreement.

ORDER

The National Labor Relations Board orders that the Respondent Gold State Acoustics & Drywall, Inc. and its alter ego, Gold State Acoustics, Inc., Hopewell Junction, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Brotherhood of Carpenters and Joiners of America Local Union 203, the Union, as the exclusive collective-bargaining representative of the Respondent's employees covered by the agreement expiring on May 31, 1990, by unilaterally repudiating and failing to abide by its terms; by failing to provide requested information relevant to the Union's performance of its function as bargaining representative during the term of the bargaining agreement; and by evading its contractual obligations by transferring unit employees to the payroll of G.S. Acoustics. The appropriate unit is:

All journeymen, foreman and apprentices.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Give full force and effect to the collective-bargaining agreement from January 1990 to its expiration on May 31, 1990, including making any contractually required payments owing to the Carpenters and Joiners Local 203 Benefit Funds during that period.

(b) Make whole all bargaining unit employees, with interest, for any losses they may have suffered as a result of the Respondent's failure to

comply with the collective-bargaining agreement, and by the Respondent's evasion of the terms of the bargaining agreement by transferring unit employees to the payroll of G.S. Acoustics, until the expiration of the agreement on May 31, 1990, in the manner set forth in the remedy section of this Decision and Order.

(c) Supply to the Union the information requested on April 27, 1990.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Hopewell Junction, New York, copies of the attached notice marked "'Appendix.'"¹ Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 17, 1991

James M. Stephens, Chairman

Mary Miller Cracraft, Member

John N. Raudabaugh, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Brotherhood of Carpenters and Joiners of America Local Union 203 as the exclusive bargaining representative of our employees covered by the agreement expiring on May 31, 1990, by unilaterally repudiating and failing to abide by its terms; by failing to provide requested information relevant to the Union's performance of its function as bargaining representative during the term of the bargaining agreement; and by evading our contractual obligations by transferring bargaining unit employees to the payroll of G.S. Acoustics. The appropriate unit is:

All journeymen, foreman and apprentices.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL give full force and effect to the collective-bargaining agreement from January 1990 to its expiration on May 31, 1990, including making any contractually required payments owing to the Carpenters and Joiners Local 203 Benefit Funds during that period.

WE WILL make whole all bargaining unit employees, with interest, for any losses they may have suffered as a result of our failure to comply with the collective-bargaining agreement, and by our evasion of the terms of the bargaining agreement by transferring unit employees to the payroll of G.S. Acoustics until the expiration of the agreement on May 31, 1990.

WE WILL supply to the Union the information requested on April 27, 1990.

GOLD STATE ACOUSTICS & DRYWALL,
INC. AND ITS ALTER EGO,
GOLD STATE ACOUSTICS, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 111 West Huron Street, Room 901, Buffalo, New York 14202-2387, Telephone 716--846--4951.